

STATE OF MICHIGAN
COURT OF APPEALS

THOMAS A. POWERS and TERRIE J.
POWERS,
Plaintiffs/Counter-Defendants-
Appellees,

UNPUBLISHED
April 19, 2012

v

DORIS M. DENGLER, Trustee of the DENGLER
FAMILY LIVING TRUST,

No. 302922
Cheboygan Circuit Court
LC No. 09-007976-CH

Defendant/Counter-Plaintiff-
Appellant.

Before: HOEKSTRA, P.J., and SAWYER and SAAD, JJ.

PER CURIAM.

Defendant appeals by right the trial court's January 7, 2011, order quieting title to a disputed piece of property in plaintiffs. We affirm.

The boundaries of the parties' properties have been in dispute on and off for decades and have been the subject of litigation on multiple occasions. The Dengler and Powers families own adjacent properties in Cheboygan County, with defendant's land on the eastern shore of Burt Lake, and the plaintiffs' property just east of defendant's. At the boundary of these properties is a vacant triangle-shaped piece of property that the parties claim ownership of, defendant by way of the metes and bounds description in her deed, and plaintiffs by way of the legal description in their deed. After discovering this overlap, plaintiffs sought an order quieting title in their favor, which the circuit court granted after finding defendant's deed language contained the disputed triangle only because a predecessor in title had conveyed it without owning it in the 1920s.

Before the lower court, defendant contended plaintiffs' claims were barred by res judicata because a 2005 order of the same circuit court already quieted title in her favor, and plaintiffs could have brought their claim at that time because the basis for this claim existed then and nothing has changed since. In the 2005 case, plaintiffs claimed title to defendant's property within Lot 1 of the Waubun Beach Subdivision after they acquired it in a tax sale and by quitclaim deed from their predecessor in title. The tax sale was determined to have been a mistake and was nullified, and the circuit court rejected plaintiffs' bona-fide-purchasers argument. The circuit court issued an order quieting title according to the legal description in

defendant's deed, which again includes the disputed triangle here, but also according to Lot 1 of the subdivision, which does not.

The trial court in the instant case determined the 2005 case did not bar plaintiffs' claim. The court noted that the language of its 2005 order quieted title in defendant by referring to both Waubun Beach Lot 1, which does not include the disputed triangle, and the metes and bounds description, which does include it. The court held that this order was ambiguous. The court resolved the ambiguity according to the intent of the order, which was to address the property conveyed in defendants' quitclaim deed, which did not include the disputed triangle. The current dispute, the court held, was never before the court. Defendant bases her appeal on only the applicability of the doctrine of res judicata.

Determination of the applicability of res judicata is a question of law that is reviewed de novo. *Washington v Sinai Hosp of Greater Detroit*, 478 Mich 412, 417; 733 NW2d 755 (2007). Res judicata bars a subsequent action when (1) the first action was decided on its merits, (2) the matter raised in the second action was or could have been resolved in the first action, and (3) both actions involve the same parties or their privies. *Dart v Dart*, 460 Mich 573, 586; 597 NW2d 82 (1999). The doctrine applies in a subsequent action between the same parties as to matters upon which the parties required the court to form an opinion and issue a judgment, *Pierson Sand & Gravel, Inc v Keeler Brass Co*, 460 Mich 372, 380; 596 NW2d 153 (1999), or to issues the parties, exercising reasonable diligence, could have raised but did not, *id.*; *Dart*, 460 Mich at 586.

Plaintiffs' claim is not barred by res judicata. Because the 2005 decision quiets title according to two different property descriptions, the circuit court was correct in determining its previous order was ambiguous. "A judgment which is ambiguous is not res judicata of the issue which is the subject matter of the ambiguity." *Theisen v City of Dearborn*, 380 Mich 621, 624; 158 NW2d 483 (1968).

Further, the ownership of the disputed triangle was not a matter on which the parties required the court to form an opinion and issue a judgment in 2005. While in 2005, defendant in the case at hand asked the court to quiet title according to the metes and bounds description that contains the disputed triangle at issue here, defendant also then framed the argument as one involving only property in Lot 1, which does not include the disputed triangle. Therefore, defendant failed to place the ownership of the disputed triangle before the court. Res judicata bars matters upon which the parties required the court to form an opinion and issue a judgment. *Pierson*, 460 Mich at 380.

Res judicata also bars a claim when it could have been brought through an exercise of reasonable diligence. *Dart*, 460 Mich at 586. While the overlap was present and could have been settled in the 2005 lawsuit, whether plaintiffs exercised reasonable diligence is arguable.¹

¹ The disputed triangle was included on plaintiffs' side of a fence erected by defendant's husband, making it less likely a reasonably diligent person would understand defendant to be claiming the disputed triangle in the 2005 case. While defendant claimed her husband

Regardless, defendant, plaintiff in the previous case, framed that lawsuit as exclusively regarding Lot 1 of the Waubun Beach Subdivision. Again, Lot 1 does not include the land at issue here. Because defendant herself was either unaware of the overlap or did not consider it important enough to raise in 2005, she is in no position to ask this Court to hold plaintiffs to a reasonably diligent standard that she herself has not maintained. See *Pierson*, 460 Mich at 383 (stating that the goal of res judicata is “to promote fairness, not lighten the loads of the state court by precluding suits whenever possible”).

Defendant also appears to argue that plaintiffs’ claims are barred by collateral estoppel because the 2005 order of the same court already quieted title in her favor and so that issue has been decided. Collateral estoppel precludes relitigation of an issue between the same parties, regardless of who brought the claim, “where the prior proceeding culminated in a valid, final judgment and the issue was (1) actually litigated, and (2) necessarily determined.” *People v Gates*, 434 Mich 146, 154; 452 NW2d 627 (1990).

Collateral estoppel does not apply in this matter. The issue of the boundary location at dispute in this case was neither actually litigated nor necessarily determined in the 2005 case. To be actually litigated, a question must be put into issue by the pleadings, submitted to the trier of fact, and determined by the trier of fact. *VanDeventer v Mich Nat’l Bank*, 172 Mich App 456, 463; 432 NW2d 338 (1988). As previously discussed, in 2005 defendant in the case at hand framed the argument as one involving only property in Lot 1, which does not include the disputed triangle. It was, then, not determined by the court, and collateral estoppel also cannot bar plaintiffs’ claim.

Affirmed.

/s/ Joel P. Hoekstra
/s/ David H. Sawyer
/s/ Henry William Saad

constructed the fence to include the disputed land on her side, but that plaintiffs moved the fence, the circuit court found in favor of plaintiffs on that issue. A factual finding made by a trial court following a bench trial is reviewed for clear error. *Schumacher v Dep’t of Natural Resources*, 275 Mich App 121, 127; 737 NW2d 782 (2007). For such a finding to be clearly erroneous, this Court must be left with a firm and definite conviction that a mistake has been made after reviewing the entire record. *Id.* at 130. In making its review, this Court defers to the trial court’s superior opportunity and expertise in evaluating the credibility of witnesses before it. MCR 2.613(C).